

SEALED BY ORDER  
OF THE COURT

**FILED**

OCT 31 2014

RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND

JOYCE BRANDA  
Acting Assistant Attorney General

MELINDA HAAG (CABN 132612)  
United States Attorney

ALEX G. TSE (CABN 152348)  
Chief, Civil Division

MELANIE L. PROCTOR (CSBN 228971)  
Assistant United States Attorney

450 Golden Gate Avenue, Box 36055  
San Francisco, California 94102-3495  
Telephone: (415) 436-6730  
FAX: (415) 436-6748  
melanie.proctor@usdoj.gov

MICHAEL D. GRANSTON

ANDY MAO

ALLIE PANG

Attorneys, Civil Division

United States Department of Justice

P.O. Box 261

Ben Franklin Station

Washington, D.C. 20044

Tel. (202) 514-6846

Fax: (202) 305-4117

E-mail: [allie.pang@usdoj.gov](mailto:allie.pang@usdoj.gov)

Attorneys for the United States of America

RECEIVED

OCT 28 2014

RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

UNITED STATES OF AMERICA ex rel,  
ROCHELLE SPENCE,

Plaintiffs,

v.

SUTTER HEALTH and ALTA BATES  
SUMMIT MEDICAL CENTER, et al.,

Defendant.

CASE NO. C 12-2817 DMR

UNITED STATES' NOTICE OF ELECTION TO  
DECLINE INTERVENTION AND CONSENT TO  
VOLUNTARY DISMISSAL WITHOUT  
PREJUDICE BY RELATOR

FILED UNDER SEAL

1 Pursuant to the Federal False Claims Act, 31 U.S.C. § 3730(b)(4)(B), the United States notifies  
2 the Court of its decision to not intervene in this action.

3 Although the United States declines to intervene, we respectfully refer the Court to 31 U.S.C.  
4 § 3730(b)(1), which allows the relator to maintain the action in the name of the United States; providing,  
5 however, that the action may be dismissed only if the court and the Attorney General give written  
6 consent to the dismissal and their reasons for consenting. *Id.* The United States Court of Appeals for  
7 the Ninth Circuit has held that, notwithstanding this language, the United States only has the right to a  
8 hearing when it objects to a settlement or dismissal of the action. *United States ex rel. Green v.*  
9 *Northrop Corp.*, 59 F.3d 953, 695 (9th Cir. 1995); *United States ex rel. Killingsworth v. Northrop Corp.*,  
10 25 F.3d 715, 723-25 (9th Cir. 1994).

11 Therefore, the United States requests that, should either the relator or the defendant propose that  
12 this action be dismissed with prejudice, settled, or otherwise discontinued, this Court provide the United  
13 States with notice and an opportunity to be heard before ruling or granting its approval. In the event the  
14 relator elects not to proceed with this action and moves to voluntarily dismiss this action without  
15 prejudice under F.R.C.P. 41(a)(1), the United States hereby notifies the Court that it consents to the  
16 relator's dismissal, so long as the dismissal is without prejudice to the United States.

17 Furthermore, pursuant to 31 U.S.C. § 3730(c)(3), the United States requests that all pleadings  
18 filed in this action be served upon the United States. The United States also requests that orders issued  
19 by the Court be sent to the Government's counsel. The United States reserves its rights to order any  
20 deposition transcripts and to intervene in this action, for good cause, at a later date.

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1 Finally, the United States requests that the Court unseal: (1) Relator's Complaint; (2) the  
 2 summons; (3) the scheduling order; (4) this Notice of Election to Decline Intervention, with (Proposed)  
 3 Order to Unseal; and (5) all other matters occurring in this action after the date the Court enters the  
 4 unsealing order. The United States requests that all other contents of the Court's file in this matter  
 5 (including, but not limited to, any applications filed by the United States for extensions of the sixty-day  
 6 investigative period, any applications for partial lifting of the seal, and any orders previously entered in  
 7 this matter) remain under seal and not be made public or served upon Defendant.

8 Dated: October 24, 2014

Respectfully submitted,

9  
 10 JOYCE BRANDA  
 Acting Assistant Attorney General

11 MELINDA HAAG  
 12 United States Attorney

13 By Melanie L. Proctor  
 14 MELANIE L. PROCTOR  
 Assistant United States Attorney

15  
 16 MICHAEL G. GRANSTON  
 ANDY MAO  
 17 ALLIE PANG  
 U.S. Department of Justice  
 18 Civil Division  
 Commercial Litigation Branch,  
 19 Fraud Section

20 Attorneys for the United States of America

21 **[PROPOSED] ORDER**

22 The United States, having declined to intervene in this action pursuant to the False Claims Act,  
 23 31 U.S.C. § 3730(b)(4)(B), the Court rules as follows:

24 1. The complaint, summons, and scheduling order shall be unsealed and served upon the  
 25 defendant by the relator. All other contents of the Court's file in this action remain under seal and not be  
 26 made public or served upon the defendant, except for this Order and the Government's Notice of  
 27  
 28

1 Election to Decline Intervention, which the relator may serve upon the defendant only after service of  
2 the complaint. The seal is lifted as to all matters occurring in this action after the date of this Order.

3 2. The parties shall serve all further pleadings and motions filed in this action, including  
4 supporting memoranda, upon the United States, as provided for in 31 U.S.C. § 3730(c)(3). The United  
5 States may order any deposition transcripts and is entitled to intervene in this action, for good cause, at  
6 any time.

7 3. The parties shall serve all notices of appeal upon the United States. All orders of this  
8 Court shall be sent to the United States.

9 4. Should the relator or the defendant propose that this action be dismissed, settled, or  
10 otherwise discontinued in any manner other than a dismissal without prejudice under F.R.C.P. 41(a)(1),  
11 the Court will provide the United States with notice and an opportunity to be heard before ruling or  
12 granting its approval.

13 IT IS SO ORDERED.

14 Dated: 10/31/14

  
15 HON. DONNA M. RYU  
16 United States Magistrate Judge  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
FOR THE  
NORTHERN DISTRICT OF CALIFORNIA

USA ex rel. ROCHELLE SPENCE,  
Plaintiff,

v.

SUTTER HEALTH, ET AL,  
Defendants.

---

Case Number: CR-12-2817-DMR

**CERTIFICATE OF SERVICE  
(UNDER SEAL)**

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on October 31, 2014, I SERVED true and correct copies of the Notice of Election to Decline Intervention and Consent to Voluntary Dismissal Without Prejudice by Relator, by placing said copies in a postage paid envelopes addressed to the persons hereinafter listed, by depositing said envelopes in the U.S. Mail, or by placing said copies into an inter-office delivery receptacle located in the Clerk's office.

Melanie L. Proctor  
Assistant U.S. Attorney  
450 Golden Gate Avenue, Box 36055  
San Francisco, CA 94102

Michael D. Granston  
Andy Mao  
Allie Pang  
U.S. Department of Justice  
Civil Division  
P.O. Box 261  
Ben Franklin Station  
Washington, D.C. 20044

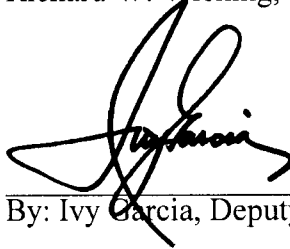
Ingrid M. Evans  
The Evans Law Firm  
3053 Fillmore Street, #236  
San Francisco, CA 94123

Kelly H. Armstrong  
The Armstrong Law Firm  
807 Montgomery Street  
San Francisco, CA 94133

Mark E. Burton , Jr.  
Hersh & Hersh  
601 Van Ness Avenue  
Suite 2056  
San Francisco, CA 94102

Dated: October 31, 2014

Richard W. Wieking, Clerk

A handwritten signature in black ink, appearing to read 'Ivy Garcia', is written over a horizontal line. The signature is stylized with a large initial 'I' and a long, sweeping underline.

By: Ivy Garcia, Deputy Clerk